

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

UNITED STATES OF AMERICA,

Case No. 10-CR-0031 (PJS/AJB)

Plaintiff,

ORDER ADOPTING REPORT AND
RECOMMENDATION

v.

ARTURO BARRILLA GARCIA (1) and
EDVIN EMANUEL GOMEZ
MALDONADO (2),

Defendants.

Thomas M. Hollenhorst, UNITED STATES ATTORNEY'S OFFICE, for plaintiff.

Stephen W. Walburg, JASPERS MORIARTY & WALBURG, PA, for defendant Edvin Emanuel Gomez Maldonado.

Defendant Edvin Emanuel Gomez Maldonado is charged with conspiracy to distribute methamphetamine. This matter is before the Court on Maldonado's objection to the March 22, 2010 Report and Recommendation ("R&R") of Magistrate Judge Arthur J. Boylan. Judge Boylan recommends denying Maldonado's motion to suppress evidence.¹

The Court has conducted a de novo review. *See* 28 U.S.C. § 636(b)(1); Fed. R. Crim. P. 59(b)(3). Based on that review, the Court adopts the R&R. The Court notes that Maldonado's argument that the evidence should be suppressed because he was not given a *Miranda* warning, *see Miranda v. Arizona*, 384 U.S. 436 (1966), is without merit. *See Maryland v. Shatzer*, 130 S. Ct. 1213, 1224 (2010) ("the temporary and relatively nonthreatening detention involved in a traffic stop or *Terry* stop . . . does not constitute *Miranda* custody").

¹Judge Boylan also recommends denial of defendant Arturo Barrilla Garcia's motions to dismiss indictment, to sever, and to suppress evidence. Garcia has not objected to the recommendation.

In his R&R, Judge Boylan recommended that Maldonado's motion to sever be denied. Maldonado did not initially object to that recommendation. Yesterday, however, Maldonado filed a "Motion for Magistrate to Reconsider Report and Recommendation of Magistrate and/or Motion to Reopen the Record Regarding Severance of Defendants." Docket Nos. 63, 67. In his motion, Maldonado argues that he has recently learned of Rule 404(b) evidence that the government will seek to admit against his codefendant, Arturo Barrilla Garcia. Specifically, the government will seek to introduce evidence that Garcia sold methamphetamine on December 2, 2009, just a few days before the alleged sale of methamphetamine on December 10, 2009 by Garcia and Maldonado. Maldonado argues that he will be "severely prejudice[d]" if he and Garcia are tried jointly and this Rule 404(b) evidence is introduced against Garcia. Maldonado renews his motion for a severance.

Maldonado's motion is denied. The Eighth Circuit has said that "[r]arely, if ever, will it be improper for co-conspirators to be tried together" *United States v. Drew*, 894 F.2d 965, 968 (8th Cir. 1990). It is common at the joint trial of co-conspirators for the government to introduce evidence — including Rule 404(b) evidence — that tends to prove the guilt of one co-conspirator but is irrelevant to the guilt of another co-conspirator. But "[m]ere disparity of evidence against codefendants or the alleged prejudicial spillover effect of evidence against a codefendant are not grounds for severance absent a showing that the jury will be unable to compartmentalize the evidence against each individual defendant." *United States v. Kime*, 99 F.3d 870, 880 (8th Cir. 1996). The trial of Garcia and Maldonado will involve only two co-defendants, the trial will likely take only two or three days, and the evidence will be straightforward. If the Court permits the government to introduce Rule 404(b) evidence against

Garcia, the Court will clearly instruct the jurors that the evidence may be considered only against Garcia and not against Maldonado. The Court has no reason to believe that “the jury will be unable to compartmentalize the evidence against each individual defendant.” *Id.*

ORDER

Based on the foregoing, and on all of the files, records, and proceedings herein, the Court OVERRULES Maldonado’s objection [Docket No. 57] and ADOPTS the R&R [Docket Nos. 55, 56]. IT IS HEREBY ORDERED THAT:

1. Defendant Arturo Barrilla Garcia’s motion to dismiss indictment [Docket No. 39] is DENIED.
2. Defendant Arturo Barrilla Garcia’s motion to sever [Docket No. 41] is DENIED.
3. Defendant Arturo Barilla Garcia’s motion to suppress evidence [Docket No. 42] is DENIED.
4. Defendant Edvin Emanuel Gomez Maldonado’s motion to suppress evidence [Docket No. 20] is DENIED.
5. Defendant Edvin Emanuel Gomez Maldonado’s motion to sever [Docket No. 28] is DENIED.

6. Defendant Edvin Emanuel Gomez Maldonado's "Motion for Magistrate to Reconsider Report and Recommendation of Magistrate and/or Motion to Reopen the Record Regarding Severance of Defendants" [Docket Nos. 63, 67] is DENIED.

Dated: April 7, 2010

s/Patrick J. Schiltz
Patrick J. Schiltz
United States District Judge